

REMARKS**Paragraph 1-3 of the Office Action**

Claims 1 and 6 are rejected under 35 USC §102(b) as being anticipated by U.S. Patent Number 5,172,795 to Riceman. Claims 1 and 6-9 are rejected under 35 USC §102(b) as being anticipated by well known personal clothing such as jackets, work suit, sweat suit, or overalls with a removable hood or removable top and an elastic gathering at the bottom opening. Claims 1-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Number D460,145 to Johnson in view U.S. Patent Number 6,508,282 to Garfalo et al.

As the amendment to claim 1 appears to cover all prior art references cited by the Examiner, all three will be addressed here. The amendment to claim 1 includes a pair of end walls and a peripheral wall including a top opening and a bottom opening therein, as well as a covering for positioning over the top opening. A fastening assembly releasably fastens the covering to the peripheral wall. This structure is not shown or motivated by the prior art.

With respect to the covering and fastening assembly, it is respectfully submitted to the Examiner that the fact that a jacket might have a removable hood is has no bearing on the current application. A hood is not a covering but an extension of a jacket. If it were a covering, it would cover the neck opening and prevent a head from extending through it or the covering would prevent the person from being able to see. That is why it is called a hood and not a covering. Further, even if a hood could be a covering, what purpose would there be to combine a jacket hood with a propane tank? The Examiner cannot simply pick and choose elements from unrelated disclosures but must find motivation, within those disclosures, for the combination. There simply is no motivation to make such a modification. The purpose of a hood is to keep the head of its wearer warm. There is no analogous need for a propane tank, and in particular the type of cooking grill propane tank for which the Garofalo device is intended and there is nothing within Johnson to state that cover could be removably attached to the tank cover. Cooking grill propane tanks are already positioned under the grill and their hoses exit out of their tops and so require an open upper end. The tank cover of Johnson may or may

not have a removably attached cover and but it is impossible to tell because it is a design disclosure and therefore cannot teach this structure. That the Examiner is simply finding elements of applicant's device regardless of motivation is obvious and this type of hindsight reconstruction is not permissible.

5 Presuming *arguendo* that the references show the elements or concepts urged by the examiner, the examiner has presented no line of reasoning, and we know of none, as to why the artisan viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the
10 claimed invention. In the instant application, the examiner has done little more than cite references to show one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, appellant does not claim that he has invented one or more new elements but has presented claims to
15 a new combination of elements. To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

20 Ex parte Clapp, 227 USPQ 972, 973 (PTO Bd. App. 1985). Simply put, a person looking at a hooded jacket and prior art would not take the hood off of the jacket and place it on the prior art because the two items are so divergent in uses that there is simply no corresponding motivation. The motivation is hindsight motivated and it is believed that
25 claims 1 and 10 and all claims depending from claim 1 are in condition for allowance.

With respect to claim 7, the Examiner is correct that Garofalo teaches a neck portion 11 including elastic. However, a neck portion being resiliently elastic does not teach an elastic band extending around a *bottom opening*. If the applicant had taught an elastic band extending around the top opening, the Examiner might have been on point,
30 but this is not what the applicant has claimed and is not what Garofalo discloses. Garofalo uses an elastic band on an upper opening, not a lower opening, and therefore combination as cited by the Examiner is deficient in this element. For this reason, claims 7 and 10 are believed to be in condition for allowance.

The applicant respectfully requests withdrawal of the rejection.

New Claims

New claims 11-19 have been added to vary the scope of the claims. No new matter has been added and all limitations therein are fully supported by the specification and figures. In particular, new claim 11 includes cords extending across the bottom opening. This feature is not shown or taught in the prior art. Therefore, all new claims are believed to be in condition for allowance.

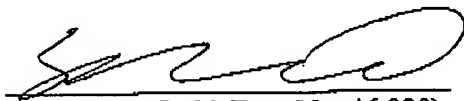
CONCLUSION

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In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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